

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

ADIRONDACK INSURANCE EXCHANGE,

Plaintiff,

Civ. No.: 1:23-cv-1397-TJM/DJS

vs.

HSBC BANK, USA, N.A. ISAOA;
STEVEN A. BRESLER; and GERRY-LYNN STOHR
a/k/a or f/k/a GERRY-LYNN BRESLER.

**ATTORNEY DECLARATION IN
OPPOSITION TO HSBC'S MOTION
AND IN SUPPORT OF
ADIRONDACK'S MOTION FOR
PARTIAL SUMMARY JUDGMENT**

Defendants.

Scott D. Storm, Esq., Pursuant to 28 U.S.C. § 1746, states and declares that the following is true and correct:

1. I am a member of Hurwitz Fine, P.C., attorneys for the plaintiff, Adirondack Insurance Exchange ("Adirondack"). As such I am familiar with the proceedings herein. I submit this Declaration in support of Adirondack's motion for partial summary judgment and opposition to HSBC Bank USA, N.A. ("HSBC") motion for partial summary judgment.

2. Pursuant to 28 U.S.C. § 2201(a), this Court may declare the rights and other legal relations of the parties as a case of actual controversy exists within its jurisdiction, that declaration having the force and effect of a final judgment or decree. This Court may render its declaration as the judgment will serve a useful purpose in clarifying and settling the legal relations in issue, and it will terminate and afford relief from uncertainty and controversy giving rise to the proceeding.

3. This motion presents the issue: where a co-owner/mortgagor of a property insures his interest under a policy of fire insurance but a second co-owner/mortgagor fails to insure her

interest in the property, after the property is damaged by fire what interest does the named mortgagee have under the policy? Answer: the mortgagee has a superior interest to the named insured but its recovery under the policy is limited to the named insured's interest, which is one-half as co-owner.

4. Adirondack seeks an Order from this Court granting its motion for partial summary judgment pursuant to Fed. R. Civ. P. 56 against defendants HSBC Bank, USA, N.A. ISAOA, Steven A. Bresler ("Mr. Bresler"); and Gerry-Lynn Stohr a/k/a or f/k/a Gerry-Lynn Bresler ("Ms. Stohr"), declaring that:

- a) Ms. Stohr has no right of recovery under the Subject Policy of Insurance;
- b) Mr. Bresler's insurable interest under the subject policy is limited to his interest in the subject property, which is fifty percent of the value of the damage under Coverage A – Dwelling;
- c) Mr. Bresler is precluded from recovery under the policy as HSBC Bank, as mortgagee, has a superior right of recovery over Mr. Bresler and the amount owed on the mortgage is greater than the amount of recovery under the policy; and
- d) HSBC's insurable interest under the subject policy may not exceed the interest of the named insured Mr. Bresler and, therefore, it is limited in its recovery under the subject policy to fifty percent of the value of the damage under Coverage A – Dwelling; and
- e) granting to Adirondack Insurance Exchange other, further and/or different relief as the Court deems just, equitable, and proper, including costs and disbursements.

5. Pleadings in the case include¹:

¹ Each of the pleadings are incorporated by reference as if fully set forth herein and attached hereto as exhibits.

- 1) Dkt. 1. Adirondack commenced this action on November 7, 2023, through its complaint. The second cause of action of the complaint is the subject of this motion.
- 2) Dkt. 7. Affidavit of service of Summons and Complaint on Ms. Stohr (see also Exhibit D to the Decl. of Mr. Tonelli), December 13, 2023.
- 3) Dkt. 18. Mr. Bresler's answer to the Complaint with counterclaim, January 17, 2024.
- 4) Dkt. 20. HSBC's answer with counterclaims and cross-claim, January 23, 2024.
- 5) Dkt. 23. Mr. Bresler's answer to HSBC's cross-claim, January 30, 2024.
- 6) Dkt. 26. Adirondack's answer to Mr. Bresler's counter claim, February 6, 2024.
- 7) Dkt. 27. Adirondack's answer to HSBC's counter claim, February 6, 2024.
- 8) Dkt. 38, 39. Stipulation to withdraw the first cause of action and other particular claims against HSBC.

6. During the investigation and evaluation of the claim, legal counsel for Adirondack conducted the examination under oath of Mr. Bresler pursuant to the conditions of the policy of insurance. The transcript is included as Exhibit B² to the Decl. of Mr. Tonelli.

7. In response to requests made by Adirondack's legal counsel during the investigation of the claim, as well as being submitted again during discovery in this action, Mr. Bresler produced pertinent records included as Exhibit C to the Decl. of Mr. Tonelli.

8. In response to requests made by Adirondack's legal counsel during discovery in this action, HSBC produced pertinent records included as Exhibit E to the Decl. of Mr. Tonelli.


9. Adirondack's expert disclosure with respect to Coverage A – Dwelling is included as Exhibit F to the Decl. of Mr. Tonelli.

² Each of the exhibits to the Tonelli Decl. are incorporated by reference as if fully set forth herein and attached hereto as exhibits.

10. For the reasons set forth above, as well as in all of Adirondack Insurance Exchange's motion papers, this Court should grant Adirondack's motion for partial summary judgment limiting recovery to fifty percent of the Coverage A – Dwelling damage.

DATED: Buffalo, New York
March 13, 2025

HURWITZ FINE P.C.



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